National Labor Relations Board



Weekly Summary of NLRB Cases

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Advocate South Suburban Hospital (13-CA-42246; 346 NLRB No. 23) Hazel Crest, IL Jan. 10, 2006. The Board affirmed the findings of the administrative law judge and held that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employee Susan Hall about her union sympathies, creating the impression that its employees' union activities were under surveillance, and threatening Susan Hall with unspecified reprisals because of her union activities. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Service Employees; complaint alleged violation of Section 8(a)(1). Hearing at Chicago, July 11-12, 2005. Adm. Law Judge Karl H. Buschmann issued his decision Sept. 21, 2005.

Alan Ritchey, Inc. (28-CA-18282, et al.; 346 NLRB No. 26) Flagstaff, AZ Jan. 13, 2006. Chairman Battista and Member Schaumber, with Member Liebman concurring in part and dissenting in part, adopted the recommendations of the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(3) of the Act by discharging employee David LaValley and violated Section 8(a)(5), (2), and (1) by conducting its Dec. 13, 2002 poll of employees as to whether they wanted LaValley to remain as their bargaining representative. [HTML] [PDF]

The Board set forth its reasoning for dismissing the complaint because the judge, in dismissing the Section 8(a)(3) allegation, failed to articulate his analysis in terms of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); and because the judge failed to give adequate reasons for his finding that the Respondent did not violate Section 8(a)(5), (2), and (1).

Member Liebman did not agree with her colleagues that the Respondent's polling was not coercive. She explained that even if the Respondent had a legitimate interest in determining the identity of the Union's negotiator, the Respondent was not without less intrusive alternatives and could have and should have communicated with LaValley himself. Member Liebman added: "Employers simply are not entitled to intermeddle in union affairs as the employer here did. Accordingly, I would conclude that the Respondent's polling violated both Section 8(a)(1) and (2) of the Act." In view of this finding, she did not address the majority's 8(a)(5) direct-dealing discussion.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by David LaValley and Alan Ritchey Drivers Employed under USPS Contract HCR 75120, 38121; complaint alleged violation of Section 8(a)(1), (2), (3), and (5). Hearing at Phoenix, April 1-2, 2003. Adm. Law Judge Gerald A. Wacknov issued his decision July 3, 2003.

Classic Sofa, Inc. (2-CA-34575, et al.; 346 NLRB No. 25) New York, NY Jan. 12, 2006. The Board affirmed and reversed certain of the administrative law judge's findings that the Respondent committed numerous violations of Section 8(a)(1) and (3) of the Act. Among others, the Board found that the Respondent violated the Act by creating the impression of surveillance of its employees' activities on behalf of Amalgamated Industrial Union Local 76B and by laying off its employees because of their membership in or their activities on behalf of the Union. It reversed the judge's finding that the Respondent violated Section 8(a)(3) and (1) by delaying employee Francisca Rivera's return from layoff by 1 day, until May 13, 2002, and that the Respondent violated Section 8(a)(1) by soliciting employee Musa Iri to persuade other employees to oppose the Union. The Board modified the judge's recommended order to conform with its findings. [HTML] [PDF]

In his partial dissent, Member Schaumber wrote: "Unlike my colleagues, I would not find that the Respondent unlawfully created the impression of surveillance when (1) Maurice Stone told Musa Iri: 'Congratulations . . . you joined the Union' and (2) Jeffrey Stone told Musa Iri that Atlas had brought in the Union." In his view, Maurice Stone's remark to Iri would not reasonably lead Iri to believe that the Respondent acquired its knowledge of his activities by unlawful means because the judge found that Iri was an ardent and active union supporter who regularly engaged in pro-union activities both inside and outside an intimate and closely supervised workplace. Regarding Jeffrey Stone's remark to Iri, Member Schaumber found that Stone's statement was insufficient to establish an impression of surveillance violation.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Amalgamated Industrial Union Local 76B; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, Oct. 20-21, Nov. 25-26 and Dec. 23, 2003, and Aug. 30, 2004. Adm. Law Judge Howard Edelman issued his decision Jan. 11, 2005.

Sheet Metal Workers Local 15 (12-CC-1258, et al., 12-CG-13; 346 NLRB No. 22) Brandon, FL Jan. 9, 2006. The Board approved the administrative law judge's finding that the Respondent violated Section 8(b)(4)(ii)(B) of the Act by unqualifiedly threatening to picket with the object of forcing Beall's, Inc., to cease doing business with nonunion sheet metal contractor Energy Air, Inc., at its jobsites in Oldman and Ormond, FL; and violated Section 8(g) by failing to give notice to Brandon Regional Medical Center of its intention to picket on March 15, 2004. [HTML] [PDF]

In affirming the judge's finding that the Respondent, in furtherance of its primary dispute with Massey Metals and WTS, unlawfully picketed at the neutral secondary site of the Brandon Regional Medical Center, the Board agreed with the judge that the Respondent's conduct in holding a "mock funeral procession" at the site constituted picketing. The procession accompanied by leafleting, involved members of the Respondent patrolling on the public sidewalk in front of the Medical Center while carrying a faux casket and accompanied by a member dressed as the Grim Reaper. The Board reversed the judge's finding that the

Respondent's leafleting conducted during the mock funeral was unlawful because the complaint did not allege the leafleting violated the Act and the General Counsel, in his answering brief, expressly disavowed that the leafleting as unlawful.

Member Liebman joined her colleagues in finding that the Respondent violated Section 8(b)(4)(ii)(B) by engaging in the mock funeral procession, saying: "The gravamen of the violation is not that patrollers carried a faux casket and a costumed 'grim reaper' figure carrying a large sickle, for these expressive displays offer 'mere persuasion' and do not serve to erect a physical or symbolic barrier to the Medical Center's entrance. Rather, it is the patrolling itself that erected a barrier to entering the hospital."

Chairman Battista and Member Schaumber agreed with Member Liebman as to the reasons why the Respondent's conduct was picketing. However, they did not necessarily agree with her to the extent that she implied that picketing required a physical or symbolic barrier.

The judge found, with Board approval, that Respondent, in its Sept. 26, 2003 letter to CVS pursuant to its labor dispute with Energy Air, did not violate Section 8(b)(4)(ii)(B). In its letter, the Respondent indicated that it understood that Energy Air "may be bidding" on future CVS projects and that there would be leafleting and protesting at the site if Energy Air worked on any CVS projects. The General Counsel and Energy Air argued that the letter should be read in context with an attached newspaper article that described the Respondent's display of a large inflatable rat during the Respondent's protest at a CVS construction site 3 months earlier.

Assuming that the letter is to be read in context with the newspaper article, and assuming further, but without deciding, that the previous display of the rat constituted picketing, the Board agreed with the judge that the newspaper article reported that the Respondent's activities at the previous CVS construction site appeared to have been confined to the primary employer and, therefore, would not have violated Section 8(b)(4)(ii)(B). It therefore determined that the letter and article indicated that whatever protest activity that the Respondent intended to undertake at a future CVS site would likewise be primary and in conformity with the standards set forth in *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950).

The Board found it unnecessary to pass on the judge's findings that the Respondent additionally violated Section 8(b)(4)(ii)(B) by displaying a large inflatable rat on public property near the front vehicle and doorway entrances to the Medical Center and by the conduct of Brandon Holly who the judge found held a leaflet in front of his chest as a placard because such findings would be cumulative and would not affect its remedial order. Member Schaumber noted that the General Counsel alleges only that the display of the rat violated Section 8(b)(4)(ii)(B) and does not allege that the display violated Section 8(b)(4)(i)(B).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Galencare, Inc., d/b/a Brandon Regional Medical Center and Energy Air, Inc.; complaint alleged violation of Section 8(b)(4)(ii)(B) and Section 8(g). Hearing at Tampa on Sept. 14, 2004. Adm. Law Judge George Carson II issued his decision Dec. 7, 2004.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Abitibi Consolidated, Inc. (Individuals) Cleveland, OH Jan. 11, 2006. 8-CA-35929; JD-03-06, Judge Arthur J. Amchan.

Lincoln Technical Institute, Inc. (American Federation of Teachers) Mahwah, NJ Jan. 12, 2006. 22-CA-26784, 26981; JD(NY)-01-06, Judge Mindy E. Landow.

United Rentals, Inc. (Operating Engineers Local 12) Pico Rivera, CA Jan. 13, 2006. 21-CA-36814, 36930; JD(SF)-01-06, Judge William G. Kocol.

Team Clean, Inc. (UNITE Local 5) Honolulu, HI Jan. 13, 2006. 37-CA-6905-1; JD(SF)-02-06, Judge William G. Kocol.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Enterprise Corrugated Container Corp. (Teamsters Local 560) (22-CA-26872; 346 NLRB No. 24) Saddle Brook, NJ Jan. 10, 2006. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION, ORDER AND CERTIFICATION OF REPRESENTATIVE

CDM Services d/b/a CDM In-Home Services, Vancouver, WA, 36-RC-6314, Jan. 10, 2006 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Radisson Kauai Beach Resort, Lihue, HI, 37-RC-4112, Jan. 11, 2006 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND DIRECTION [that Regional Director open and count ballot]

P & S Delivery Service, Inc., Meridian, MS, 15-RC-8635, Jan. 11, 2006 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND CERTIFICATE OF RESULTS OF ELECTION

Coastal International Security, Inc., Washington, DC, 5-UD-137, Jan. 12, 2006 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Haven Health Center of Windham, LLC, Willimanter, CT, 34-RC-2134, Jan. 11, 2006 (Chairman Battista and Member Schaumber; Member Liebman dissenting)
Silver Cross Hospital, Joliet, IL, 13-RC-21277, Jan. 11, 2006 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

The Greater Hartford Association for Retarded Citizens, Inc. d/b/a HARC, Hartford, CT, 34-RC-2157, Jan. 11, 2006 (Chairman Battista and Members Liebman and Schaumber)

Miscellaneous Board Orders

ORDER REMANDING [to Regional Director for further proceedings]

Rabanco, Ltd., Seattle, WA, 19-UC-731, Jan. 11, 2006 (Chairman Battista and Member Schaumber; Member Liebman concurring)
